



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 197546

Present:

- versus -

SERENO, C. J.,
 Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, JJ.

**BAYANI DE LEON, ANTONIO DE
 LEON, DANILO DE LEON and
 YOYONG DE LEON,**
 Accused-Appellants.

Promulgated:

MAR 23 2015

X -----X


DECISION

PEREZ, J.:

For review is the conviction for the crime of Murder of accused-appellants BAYANI DE LEON (Bayani), ANTONIO DE LEON (Antonio), DANILO DE LEON (Danilo), and YOYONG DE LEON (Yoyong) by the Regional Trial Court (RTC),¹ in Criminal Case No. Q-02-113990, which Decision² was affirmed with modifications by the Court of Appeals.

The accused-appellants were charged with Robbery with Homicide under an Information which reads:

¹ Penned by Presiding Judge Ma. Theresa L. De La Torre-Yadao, RTC Branch 81, Quezon City dated 25 May 2007. *CA rollo*, pp. 40-53.
² Penned by Associate Justice Stephen C. Cruz with Associate Justices Isaias P. Dicedican and Danton Q. Bueser, concurring; Decision dated 15 July 2010. *Id.* at 150-172.



That on or about the 2nd day of March, 2002, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to gain, by means of violence and/or intimidation against [sic] person, did then and there wilfully, unlawfully and feloniously rob one EMILIO A. PRASMO, in the following manner, to wit: on the date and place aforementioned, while victim/deceased Emilio A. Prasmo was walking along A. Bonifacio Street, Barangay Sta. Lucia, Novaliches, this City, together with his wife and daughter in-law, accused pursuant to their conspiracy armed with sumpak, samurai, lead pipe and .38 cal. revolver rob EMILIO A. PRASMO and took and carried away ₱7,000.00, Philippine currency, and by reason or on the occasion thereof, with evident premeditation, abuse of superior strength and treachery, accused with intent to kill[,] attack, assault and employ personal violence upon EMILIO A. PRASMO by then and there shooting and hacking the victim with the use of said weapons, thereby inflicting upon him serious and grave wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Emilio A. Prasmo.³

When arraigned, all the accused-appellants entered a plea of not guilty except accused Antonio. Thus, the RTC ordered a reverse trial in so far as Antonio is concerned.

Evidence of the Prosecution

The prosecution presented Erlinda A. Prasmo (Erlinda), wife of the victim, Emilio Prasmo (Emilio), who testified that on 2 March 2002, while they were walking along Sta. Lucia Street, Novaliches, on their way to RP Market, the accused-appellants, who are siblings, blocked their way. Accused-appellant Danilo, armed with a “*sumpak*”, suddenly hit Emilio with a “*bakal*” while accused-appellant Antonio, who was armed with a “*samurai*”, hacked Emilio in the forehead and struck him with a lead pipe at the right back portion of his legs and middle back portion of his torso. Accused-appellant Danilo then took Emilio’s money in the amount of ₱7,000.00 and thereafter aimed the “*sumpak*” at the lower portion of Emilio’s chest and fired the same, causing Emilio to slump on the ground. Accused-appellant Yoyong also hit Emilio with a lead pipe at the back of the neck and middle portion of his back.

As accused-appellants attacked and mauled Emilio, Erlinda, seeing her husband sprawled motionless on the ground, shouted for help, but nobody dared to help because accused-appellant Bayani, armed with a gun,

³ CA rollo, p. 40.

was shouting “*walang lalapit*”. The accused-appellants immediately left and Emilio was brought to the FEU Fairview Hospital, where Emilio died.

Gina Prasmo, Emilio’s daughter, testified that at the time of the incident, she was at their house when she was informed of the news. She immediately went to the hospital where she learned that her father was already dead.

The testimony of Dr. Editha Martinez, a medico-legal officer of the Medico-Legal Division, Philippine National Police Crime Laboratory, Camp Crame, Quezon City, was dispensed with because she was not the one who performed the autopsy on the cadaver of Emilio, but nevertheless, she identified such documents as Medico-Legal Report, Autopsy Report, Sketch of the head showing contusion, anatomical sketch showing the gunshot wound on the right portion of the chest, and the anatomical sketch of Emilio.

Evidence of the Defense

Carmelita de Leon (Carmelita), sister of the accused-appellants, testified that on the evening of 1 March 2002, she was at her house when her brothers, accused-appellants Danilo and Antonio, arrived. Upon observing that the heads of Antonio and Danilo were bleeding, she was informed that Emilio and his son, Edgardo Prasmo (Edgardo), attacked and mauled them, which caused their injuries. They reported the incident to a “*tanod*” in the *barangay* hall, Julio Batingaw, who told them to return in the afternoon so they could have a meeting with Emilio and Edgardo. When they returned, Emilio and Edgardo did not appear.

In the evening, at around 7 o’clock, fifteen (15) men carrying firearms, who included Jerry and Edgar, sons of Emilio, stormed her house looking for accused-appellants and threatened to kill her if she will not disclose their whereabouts. To support her testimony, the defense offered in evidence the medical certificates for the injuries sustained by accused-appellants Antonio and Danilo dated 1 March 2002 and the entry in the *barangay* blotter book dated 2 March 2002, about the mauling of accused-appellants Antonio and Danilo.

The accused-appellants gave their testimonies that follow:

Jose de Leon, also known as Yoyong, was at the house of his brother-in-law, Willie Bandong, in Bagong Barrio, Caloocan City to discuss the

schedule of the “*pabasa*”. He stayed there between 8:00 to 9:00 o’clock in the evening. Danilo, at that time, was with his mother in Pugad Lawin in Quezon City, to accompany his mother in doing her work as a “*manghihilot*”. They left Pugad Lawin between 8:00 to 9:00 o’clock in the evening and went home. Bayani, a police civilian agent, at the night of the crime, was at the Police Station No. 5 in Fairview, Quezon City, talking to a police officer.

Antonio, in the morning of 2 March 2002, went to the *barangay* hall with his mother, Carmelita, and accused-appellant Danilo, to file a complaint against Emilio and Emilio’s son, Edgardo, due to the mauling incident the previous evening. In the *barangay* hall, they were told to return in the afternoon so they could have a meeting with Emilio and Edgardo. They returned as told. Emilio and Edgardo did not.

On the way home, accused-appellant Antonio met Emilio, Erlinda, and Gina, Emilio’s daughter, walking along A. Bonifacio Street. Emilio, upon seeing Antonio, immediately opened his jacket and tried to pull “something” out. Antonio then instantly tried to grab that “something” from Emilio. While grappling for the possession of that “something”, which turned out to be a “*sumpak*”, it fired.

Bernaly Aguilar, while on her way to the market in Sta. Lucia, witnessed a fight involving accused-appellant Antonio and another man, who were grappling for the possession over a “*bakal*”. After walking a few meters away from the incident, she heard a shot.

The Ruling of the Regional Trial Court

According to the accused-appellants, Erlinda is not a credible witness and that her testimony is barren of probative value for having grave and irreconcilable inconsistencies, as opposed to accused-appellant Antonio’s testimony which supposedly established the presence of all the essential requisites of self-defense. Accused-appellants referred to the inconsistency between Erlinda’s court testimony and her *Sinumpaang Salaysay*. In her *Sinumpaang Salaysay*, she identified accused-appellant Antonio as the one who fired the “*sumpak*” at the lower chest of Emilio and took Erlinda’s money. However, during her direct examination, she testified that it was accused-appellant Danilo who shot Emilio with a “*sumpak*” and thereafter, took his wallet.

Accused-appellants further argued that Erlinda could not have mistaken Danilo for Antonio, because she knew them both as they reside six (6) houses away from the house of the Prasmos and that accused-appellant Antonio has a distinctive feature — having a cleft palate or is “*ngongo*”.

The RTC rejected accused-appellants’ contentions. According to the RTC, Erlinda’s narration of the incident is clear and convincing. While her testimony has some inconsistencies, they refer only to collateral and minor matters, which do not detract from the probative value of her testimony.

The trial court found established the circumstances of abuse of superior strength and treachery, abuse of strength absorbed by the aggravating circumstance of treachery:⁴

These requisites are obviously present in this case considering that the evidence shows that after Danilo suddenly fired at Emilio’s lower portion of the chest accused Antonio and Yoyong ganged up on Emilio, with Antonio hitting him with a lead pipe on the right back portion of his legs and in the middle back torso and hacking him with a samurai, and accused Yoyong hitting also (sic) him with a lead pipe on the right back leg and middle portion of his back. Said action of the four (4) accused rendered it difficult for the victim to defend himself.⁵

However, citing *People v. Nimo*,⁶ the RTC ruled that because robbery was not duly established, it cannot convict accused-appellants for robbery with homicide. It relied on the principle that in order to sustain a conviction for robbery with homicide, robbery must be proven as conclusively as the killing itself.⁷ Thus, as opposed to the Information which charged the accused-appellants of the crime of Robbery with Homicide, the RTC found accused-appellants guilty beyond reasonable doubt of the crime of Murder by conspiracy. The dispositive portion of the RTC Decision reads:

WHEREFORE, the Court finds accused BAYANI DE LEON, ANTONIO DE LEON, DANILO DE LEON and YOYONG DE LEON guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code as amended and are hereby sentenced to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties provided by law and to jointly and severally indemnify the heirs of the late EMILIO PRASMO the amounts

⁴ CA rollo, p. 51, citing *People v. Maalat*, G.R. No. 109814, 8 July 1997, 275 SCRA 214-215.

⁵ CA rollo, p. 52.

⁶ G.R. No. 92533, 5 October 1993, 227 SCRA 69.

⁷ *People v. Nimo*, id. at 85-86.

of P50,000.00 as indemnity for his death and P50,000.00 as moral damages.⁸

The Ruling of the Court of Appeals

The Court of Appeals affirmed the conviction of the accused-appellants. Contrary to the accused-appellants' contention that the trial court committed a reversible error when it gave credence to Erlinda's testimony, the Court of Appeals considered Erlinda's recollection of the events as direct, positive and convincing manner, unshaken by a tedious and grueling cross-examination.⁹

With regard to the crime charged, the Court of Appeals agreed that the accused-appellants are guilty of the crime of Murder instead of Robbery with Homicide. As borne by the records, the only intent of the accused-appellants was to kill Emilio. The "accused-appellants had an axe to grind against Emilio x x x. The means used by the accused-appellants as well as the nature and number of wounds - debilitating, fatal and multiple – inflicted by appellants on the deceased manifestly revealed their design to kill him. The robbery committed by appellant Danilo [was on] the spur of the moment or [was] a mere afterthought."¹⁰

Also, the Court of Appeals found accused-appellant Danilo guilty of Robbery for unlawfully divesting Emilio of ₱7,000.00, which it considered as an action independent of and outside the original design to murder Emilio. The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, the appealed Decision dated May 25, 2007 of the Regional Trial Court of Quezon City, Branch 81 is hereby **AFFIRMED in toto with the added MODIFICATION** that accused-appellant Danilo de Leon is also found guilty beyond reasonable doubt of the crime of Robbery defined under Article 293 and penalized under Article 294 (5) of the Revised Penal Code, and is sentenced to suffer the indeterminate penalty of two (2) years and seven (7) months of *prision correccional*, as minimum, to eight (8) years and ten (10) days of *prision mayor*, as maximum. He is ordered to return to the heirs of Emilio Prasmó the cash of ₱7,000.00, representing the amount he took from said victim.¹¹

⁸ CA *rollo*, p. 53.

⁹ Id. at 157

¹⁰ Id. at 167.

¹¹ Id. at 171.

Now, before the Court on automatic review, accused-appellants contend, by way of assignment of errors, that the appellate court gravely erred when:

1. it gave full credence to the inconsistent testimony of the alleged eyewitness Erlinda Prasmo; and
2. it disregarded the self-defense interposed by Antonio De Leon and the denial and alibi interposed by Bayani, Danilo, and Yoyong, all surnamed De Leon.¹²

Our Ruling

The accused-appellants' attempt to discredit Erlinda's testimony must fail. Inconsistencies between the declaration of the affiant in her sworn statements and those in open court do not necessarily discredit the witness;¹³ it is not fatal to the prosecution's cause. In fact, contrary to the defense's claim, discrepancies erase suspicion that the witness was rehearsed or that the testimony was fabricated. As correctly held by the Court of Appeals, despite minor inconsistencies, Erlinda's narration revealed each and every detail of the incident, which gave no impression whatsoever that her testimony is a mere fabrication. As we already enunciated in previous rulings, "[i]t is a matter of judicial experience that affidavits or statements taken *ex parte* are generally incomplete and inaccurate. Thus, by nature, they are inferior to testimony given in court, and whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight."¹⁴

Before us is a reversed trial. As one of the accused-appellants, Antonio, pleaded self-defense, he admitted authorship of the crime. At this juncture, the burden of proof is upon the accused-appellants to prove with clear and convincing evidence the elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself,¹⁵ which the defense failed to discharge.

¹² *Rollo*, p. 50.

¹³ *People v. Dagami*, 394 Phil. 482, 488-489 (2000).

¹⁴ *Id.* at 489.

¹⁵ *People v. Placer*, G.R. No. 181753, 9 October 2013, 707 SCRA 199, 207.

Unlawful Aggression

Unlawful aggression refers to an assault to attack, or threat in an imminent and immediate manner, which places the defendant's life in actual peril. Mere threatening or intimidating attitude will not suffice. There must be actual physical force or actual use of weapon.¹⁶

Applying the aforesaid legal precept, Emilio's act of pulling "something" out from his jacket while he was three (3) to four (4) meters away from accused-appellant Antonio cannot amount to unlawful aggression. Neither can the act of pulling "something" out amount to physical force or actual use of weapon, or even threat or intimidating attitude. Even if accused-appellant Antonio's account of the incident is truthful, that Emilio had motive to kill accused-appellant Antonio, giving accused-appellant reasonable grounds to believe that his life and limb was in danger, and that the "something" was indeed a "*sumpak*", it can hardly be recognized as unlawful aggression to justify self-defense.¹⁷ There is no showing that accused-appellant Antonio's life was in peril by the act of pulling "something" out. As correctly observed by the Court of Appeals, "it must be noted that appellant never said that Emilio aimed or pointed the "*sumpak*" at him or at least made an attempt to shoot him".¹⁸ The threat on accused-appellant Antonio's life is more imagined than real. As we already held in a *catena* of cases, the act of pulling "something" out cannot constitute unlawful aggression.¹⁹

Accused-appellant Antonio cannot allege that it was Emilio who instigated the incident; that Emilio's fate was brought about by his own actuations. There is no sufficient provocation, *nay*, provocation at all in the act of pulling "something" out.

Contrary to accused-appellant Antonio's contention that he acted in self-defense, the Medico-Legal Report No. M-685-02 dated 12 March 2002 proved otherwise. As borne by the records, Emilio sustained numerous wounds, including the fatal gunshot wound in the chest, which belie accused-appellants' defense that Antonio was alone at the scene of the crime and acted in self-defense. The Medico-Legal Report No. M-685-02 dated 12 March 2002 revealed that the victim sustained the following multiple injuries:

¹⁶ *People v. Nugas*, G.R. No. 172606, 23 November 2011, 661 SCRA 159, 167-168.

¹⁷ *People v. Bayocot*, 256 Phil. 27, 34-35 (1989).

¹⁸ CA *rollo*, p. 164.

¹⁹ *People v. Anies*, 203 Phil. 332, 351 (1982).

HEAD AND NECK:

1. Lacerated wound, right parietal region, measuring 4 x 3 cm, 7 cm from the mid-sagittal line.
2. Contusion, right mandibular region, measuring 11 x 2 cm, 7 cm from the anterior midline.
3. Contusion, nasal region, measuring 3 x 2.5 cm, along the anterior midline.
4. Hematoma, left parietal region, measuring 5 x 4 cm, 8 cm from the anterior midline.
5. Contusion, left cheek, measuring 11 x 3 cm, 8 cm from the anterior midline.
6. Contusion, left lateral neck region, measuring 6 x 3 cm, 4 cm from the anterior midline.
7. Lacerated wound, occipital region, measuring 5 x 1.8 cm, bisected by the anterior midline.
8. There is a scalp hematoma at the right parieto-occipital region.
9. There are subdural, sub arachnoid hemorrhages at the right cerebrum.
10. The right parietal bone is fractured.

TRUNK AND ABDOMEN:

1. Gunshot wound, right chest, measuring 2.6 cm x 2.3 cm, 4 cm from the anterior midline, 112 cm from the right heel, directed posteriorwards, downwards, and slightly lateralwards, fracturing the 6th and 7th ribs, lacerating the lower lobe of the right lung, diaphragm, right lobe of the liver with the deformed plastic wad embedded, right kidney with 2 lead pellets found embedded and the aorta with 3 pellets embedded thereat and 2 lead pellets found at the right thoracic cavity.
2. Contusion, right shoulder region, measuring 12 x 3 cm, 8 cm from the posterior midline.
3. Abrasion, right shoulder region, measuring 3.5 x 2 cm, 12 cm from the posterior midline.
4. Contusion, left shoulder region, measuring 4 x 2 cm, 6 cm from the posterior midline.

EXTREMITIES:

1. Contusion, left elbow, measuring 8 x 2 cm, 5 cm medial to its posterior midline.
2. Abrasion, dorsal aspect of the left hand, measuring 0.6 x 0.3 cm, 3 cm medial to its posterior midline.²⁰

²⁰

CA rollo, pp. 47-48.

As we already held, the nature and location of wounds are considered important indicators which disprove a plea of self-defense.²¹ A perusal of the evidence would depict the presence of a deliberate onslaught against Emilio. The means used by accused-appellants as shown by the nature, location and number of wounds sustained by Emilio are so much more than sufficient to repel or prevent any alleged attack of Emilio against accused-appellant Antonio. Evidently, the accused-appellants' intent to kill was clearly established by the nature and number of wounds sustained by Emilio. The wounds sustained by Emilio indubitably reveal that the assault was no longer an act of self-defense but a homicidal aggression on the part of accused-appellants.²²

Double Jeopardy

The RTC did not find the accused guilty of the crime of robbery with homicide as charged in the Information, but found all the accused guilty of the crime of murder. According to the RTC, contrary to the charge of robbery with homicide, the accused is guilty of the crime of murder because the prosecution failed to establish the crime of robbery. The RTC, citing *People v. Nimo*,²³ ratiocinated that in order to sustain a conviction for robbery with homicide, robbery must be proven as conclusively as the killing itself.

On the other hand, the Court of Appeals affirmed with modifications the ruling of the RTC and found all of the accused guilty of the crime of murder. However, contrary to the findings of the RTC with regard to the crime of robbery, the Court of Appeals reversed the ruling of the RTC and found accused Danilo guilty of the separate crime of robbery. We find that the appellate court erred for violating the constitutional right of Danilo against double jeopardy as enshrined in Section 21, Article III of the 1987 Constitution, to wit:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.²⁴

²¹ *People v. Cañete*, 350 Phil. 933, 943-944 (1998).

²² *People v. Lanuza*, G.R. No. 188562, 24 August 2011, 656 SCRA 293, 300-301.

²³ *People v. Nimo*, supra note 6.

²⁴ 1987 Constitution, Art. III, Section 21.

Double jeopardy attaches if the following elements are present: (1) a valid complaint or information; (2) a court of competent jurisdiction; (3) the defendant had pleaded to the charge; and (4) the defendant was acquitted, or convicted or the case against him was dismissed or otherwise terminated without his express consent.²⁵

In case at bar, it is undisputed the presence of all the elements of double jeopardy: (1) a valid Information for robbery with homicide was filed; (2) the Information was filed in the court of competent jurisdiction; (3) the accused pleaded not guilty to the charge; and (4) the RTC acquitted Danilo for the crime of robbery for lack of sufficient evidence, which amounted to an acquittal from which no appeal can be had. Indeed the conviction for murder was premised on the fact that robbery was not proven. The RTC Decision which found accused guilty of the crime of murder and not of robbery with homicide on the ground of insufficiency of evidence is a judgment of acquittal as to the crime of robbery alone.

As the first jeopardy already attached, the appellate court is precluded from ruling on the innocence or guilt of Danilo of the crime of robbery. To once again rule on the innocence or guilt of the accused of the same crime transgresses the Constitutional prohibition not to put any person “twice x x x in jeopardy of punishment for the same offense.”²⁶

As it stands, the acquittal on the crime of robbery based on lack of sufficient evidence is immediately final and cannot be appealed on the ground of double jeopardy.²⁷ A judgment of acquittal is final and unappealable. In fact, the Court cannot, even an appeal based on an alleged misappreciation of evidence, review the verdict of acquittal of the trial court²⁸ due to the constitutional proscription, the purpose of which is to afford the defendant, who has been acquitted, final repose and safeguard from government oppression through the abuse of criminal processes.²⁹ The crime of robbery was not proven during the trial. As we discussed, the acquittal of the accused-appellant, including Danilo, is not reversible.

WHEREFORE, the Decision of the Court of Appeals is hereby **AFFIRMED with MODIFICATIONS**. Accused-Appellants **BAYANI**

²⁵ *Bangayan, Jr., v. Bangayan*, G.R. No. 172777, and G.R. No. 172792, 19 October 2011, 659 SCRA 590, 600.

²⁶ 1987 Constitution, Art. III, Section 21.

²⁷ *People v. CA*, G.R. No. 198589, 25 July 2012, 677 SCRA 575, 579.

²⁸ *Supra* note 25, at 600.

²⁹ *People v. Terrado*, 580 Phil. 79, 87 (2008).


DE LEON, ANTONIO DE LEON, DANILO DE LEON and **YOYONG DE LEON** are hereby declared guilty beyond reasonable doubt of the crime of Murder and are sentenced to suffer the penalty of *reclusion perpetua*. The accused-appellants are ordered to pay Emilio Prasmo's heirs the following amounts: ₱75,000.00 as civil indemnity for Emilio Prasmo's death, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

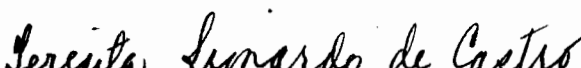
All monetary awards shall earn interest at the rate of 6% per annum from the date of finality until fully paid.

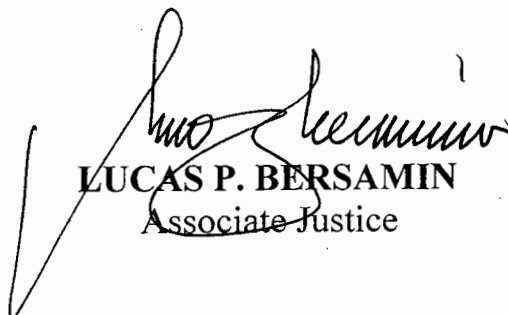
SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

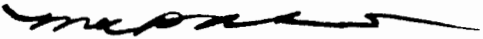

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice